STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	**)**	
On its own motion	**)**	
	)	**Docket 06-0703**
Revision of 83 Ill. Admin. Code Part 280	**)**	

GOVERNMENTAL AND CONSUMER INTERVENORS'

BRIEF ON EXCEPTIONS

CITIZENS UTILITY BOARD
CITY OF CHICAGO
THE PEOPLE OF THE STATE OF ILLINOIS

June 29, 2012

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The Citizens Utility Board ("CUB"), through its attorney, the City of Chicago ("City), through its Corporation Counsel, and the People of the State of Illinois, ex rel. Lisa Madigan, Attorney General ("AG"), (hereinafter "Governmental and Consumer Intervenors" or "GCI"), hereby file their Brief on Exceptions in the above-captioned proceeding in accordance with the schedule provided in the Administrative Law Judge's ("ALJ") Proposed Order ("PO").

I. INTRODUCTION

The Proposed Order has assembled from the varied (and sometime opposing) proposals of the parties a recommended rule that is for the most part very commendable. Because of the Proposed Order's considerable (though not total) success in achieving a balance between utility and customer rights and obligations, GCI have attempted to limit their exceptions. However, there are some areas where the Proposed Order's conclusion has such an impact on customers or may be so divergent from the record evidence that comment at this stage is still warranted. This Brief on Exceptions presents GCI's exceptions to those portions of the recommended rule (and the justifications articulated in the Proposed Order) that are unacceptable and unjustified, and have serious consequences for customers.

II. ARGUMENT

Section 280.10 Exemptions

EXCEPTION # 1

The Proposed Order adopts Staff's proposed rule regarding exemptions to the applicability of the provisions of Part 280. PO at 21. The Proposed Order also "rejects GCI's proposals to add additional language prescribing what a utility must put in an exemption petition, limiting joint petitions, and limiting the Commission's approval of the waiver to one year." *Id*. The record, however, shows that GCI's modifications are warranted, do not impose significant impacts or hardship on the utilities and should be adopted.

GCI proposed that section 280.210 be modified to require utilities to document to the Commission on an annual basis that any exemption to a particular provision of Part 280, subject to Commission approval. These recommendations are consistent with one of Staff's primary goals in redrafting Part 280. Staff witnesses Howard and Agnew stated that "this rule is not just for those of us who are already quite familiar with the esoteric ways of utility regulations. Rather, this rule is intended to also help consumers and consumer advocates, particularly with their understanding of their rights and responsibilities." Staff Ex. 3.0 (Rev.) at 4:83-86. GCI witness Alexander made a similar point, stating:

> Another objective of this rewrite is to make the rules governing this area of utility-customer interaction more accessible to customers. That objective is impossible to achieve if customers must scour hundreds of pages of hard-to-read utility tariffs that they are likely not aware of, or would not know where to find, to determine if the Commission's rules have been overridden by a tariff. Individual utility tariffs may not be consistent with each other or easy to obtain. Not all customers have computers and internet service and none of the larger utility companies maintain neighborhood offices for access to tariffs. A major theme of the

> GCI comments is to eliminate any notion that customers can or should be made to routinely consult utility tariffs to learn about their rights and responsibilities.

GCI Ex. 5.0 (Rev.) at 8-9:175-185. While these comments were made in response to a slightly different issue (ComEd witness testimony regarding the fact that Part 280 should take precedence over any conflicting utility tariff (Staff Ex. 3.0 (Rev.) at 4:79-81; GCI Ex. 5.0 (Rev.) at 8:168-169)), the same rationale applies to waivers to the rule. Part 280 is – and will be – the primary resource that customers and consumer advocates use and will use to determine customer rights.

Without clear reporting requirements, it is not clear where customers or consumer advocates would look to determine whether a particular utility has been granted a waiver to a particular provision of Part 280. Customers and consumer advocates should not have to guess whether a waiver has been granted and should not be required to scour Commission filings to make that determination. Waivers should be granted sparingly. GCI's recommendation that utilities must demonstrate on an annual basis that a specific waiver continues to be warranted and that the Commission approve such waivers also on an annual basis is a common-sense protection that should be adopted.

Proposed Order Revisions

Accordingly, the Proposed Order conclusion at page 21 should be modified as set forth below.

> The Commission finds that Staff's proposed language is appropriate and is hereby adopted. The Commission ~~rejects GCI's proposals to add additional language prescribing what a utility must put in an exemption petition, limiting joint petitions, and limiting the Commission's approval of the waiver to one year.~~ also adopts GCI's proposals that utilities are required to document to the Commission on an annual basis that any exemption to a

> particular provision of Part 280. Section 280.10 should be modified such that the Commission must approve any exemption on an annual basis. Part 280 is -- and will be -- the primary resource that customers and consumer advocates use and will use to determine customer rights.

Section 280.15 Compliance

EXCEPTION # 3

The Proposed Order correctly finds:

> This Docket is more than six years old. Delaying the implementation of a revised Part 280 for an extended period of time after its adoption is not consistent with the public interest.

PO at 32. After a process that has consumed more than six years, further delay requires compelling justification. Nonetheless, the Proposed Order accepts the concept underlying Nicor's proposal that every utility be granted automatically a period of up to two years to complete implementation of the revised rules. The Proposed Order adopts the following specific language:

> The Commission shall require implementation of each requirement as quickly as reasonably practicable, but in no event later than 24 months from the effective date of the rules, and that each utility post and update a "checklist" on its website so that the public can be informed when the utility has brought itself into compliance with each new requirement of Part 280 as rewritten.

PO, Att. 1, § 280.15.

GCI accepts the Proposed Order's determination that some time is required to make necessary changes in certain utility processes. However, in that context, certain reasonable ancillary measures (designated by bolded letters in the following discussion) are advisable to protect the public interest.

First, GCI agree that the correct fundamental standard for implementation of the new Part 280 (with or without this provision for delay) is "as quickly as reasonably practicable." **[A]** Accordingly, the Commission should emphasize clearly in its order in this proceeding that this objective must be given the highest priority.

Second, GCI ask that the Commission reconsider the allowed "24 months from the effective date of the rules" to implement them. As GCI explained in their briefs, this protracted proceeding has provided ample opportunity for utilities to prepare for revised rules and procedures. *See* PO at 21-25; GCI Init. Br. at 15; GCI Reply Br. at 14-15. Two years from the effective date of the revised Part 280 does not appear consistent with an "as quickly as practicable" standard. A shorter maximum period should be adopted. In its briefs, GCI argued that the revised rules must be implemented "immediately where possible, and otherwise as quickly as is practicable." GCI Init. Br. at 20. If the Commission retains a two year period of permissible delay, that period should start when the Commission issues its First Notice Order. The additional period of procedural formalities that must precede the rules becoming effective as final rules will provide a period well beyond the six years already consumed, with considerable specific guidance as to where changes may be needed. The Commission's First Notice decision should provide enough specificity and certainty about the ultimate content of the rules that further delay in implementation is not justified, especially since the early implementation stages are usually planning activities.

Third, there is a danger that the Proposed Order's language may be interpreted as an automatic grant of leave for delay to any utility -- without any particularized showing of need, any identification of the specific projects that require some delay, or any specified "as quickly as practicable" completion date. The opposite should be the case. Each utility wishing to delay

implementation of one or more sections of the revised Part 280 rules should provide such information (justification for delay, affected sections, specific project required, estimated completion/implementation date) in a formal submission to the Commission.

Fourth, GCI also note that the recommended provision does not identify any metric or other means for assessing the pace of implementation to evaluate progress against "as quickly as reasonably practicable." The concern remains, among consumer representatives, that any allowed period of delay will become the *de facto* minimum period, for new Commission-prescribed protections and clarified obligations to be reliably available. The Commission should make clear that "as quickly as reasonably practicable" requires that, wherever practicable, the utility must put interim solutions in place. Any delay authorized by this section is only for permanent system changes required for implementation. A utility should not be permitted to delay completely implementation of a rule while time-consuming permanent process changes (like computer system re-programming) are being completed.[1] More immediate methods of providing the customer protections adopted in the new rules should be implemented as a condition of any such delay.

Fifth, any blanket exemption from compliance with the new rules would be a departure from the Proposed Order's approach in other areas. As to other provisions of Part 280, an individualized waiver from the immediate and universal application of the rules is required to delay or to avoid the requirements and customer protections of the revised Part 280. *See, e.g.,* PO at 119 (". . . small utilities should seek a waiver of the requirement rather than incorporating language allowing utilities to circumvent the rule."). Accordingly, utilities' applications of this

[1] As GCI noted in its briefs, the utilities' testimony generally did not address such interim measures. *See* PO at 22.

permissive delay should be carefully scrutinized and monitored. The required documentation for a waiver request should include an attestation of need, details on the utility's provisions for (or evidence proving the unavailability of) interim solutions as to each delayed section, and a detailed plan and timetable for making the needed changes. Such Commission review could address a major Staff concern: "what we would not want to have happen is for us to set up a scenario where the utility might pick and choose only the parts that seem most beneficial to it to enact right off the bat while waiting for the clock to run out on the parts that might be beneficial to consumers." June 8, 2011 Tr. at 791-792.

The recommended modifications of the Proposed Order discussed above are consistent with the specific requirements GCI proposed originally in its Initial Brief.

> • If the Commission nonetheless adopts a blanket delay provision, GCI propose (in the alternative) that any delay be conditioned on strict compliance with at least the following requirements.
>
> • All provisions of the revised Part 280 shall be implemented immediately where possible, and otherwise as quickly as is practicable.
>
> • Upon good cause shown and compliance with the conditions of any waiver for delayed implementation, specifically identified provisions of the revised rules, may be implemented on a delayed schedule approved by the Commission.
>
> • A utility seeking such a delay must provide a particularized identification of those sections of Part 280 for which a compliance delay is necessary, supported by a description of the work that must be done to achieve compliance with each such section, a description how the work relates to the requirements of the identified section(s), why a delay is necessary, and an aggressive timetable for completion of the necessary work.
>
> • The utility shall also provide a detailed plan for completing the compliance work that includes the details of interim utility programs

> designed to achieve maximum reasonable compliance while permanent systems modifications are being implemented.
>
> • The utility shall provide regular reports on the utility's execution of its compliance plan filed on e-Docket as a part of this proceeding.

The reasonableness of these requirements is demonstrated by their similarity to the less comprehensive conditions proposed by ComEd:

> Since some of the rule changes might well be able to be implemented quickly, I suggest that the Commission require implementation of each requirement as quickly as reasonably practicable, but in no event later than 24 months from the date of the effectiveness of the rules, and that each utility post and update a "checklist" on its website so that the public can be informed when the utility has brought itself into compliance with each requirement of Part 280 as rewritten.

GCI Init. Br. at 19-20, citing ComEd Ex. 3.0 at 43:959-44:965. The Proposed Order does not identify any facts that make these customer protections any less necessary now.

As suggested by the ComEd testimony, the website checklist required by the Proposed Order is a useful tracking device. However, if such websites are intended to be the Commission's principal means of oversight for the delayed implementation of Part 280 revisions, it requires strengthening. So that customers are informed of any delay in the effectiveness of new Part 280 rights and obligations, a utility delaying implementation should clearly identify which revised provisions are not effective because of its implementation difficulties. Where interim solutions are in place, a section would not be shown as delayed. Each utility's checklist should be a summary of information that has been formally submitted to the Commission and reviewed for reasonableness by the Commission -- not a mere notification of an unreviewed, unilateral utility decision. For each delayed Part 280 provision, the website should

detail: the specific projects (IT, organizational, etc.) that must be completed for implementation and an expected "as quickly as reasonably practicable" date of completion, both regularly updated. This requirement should not mean any additional delay, since such developing such planning details would usually be the first step in utility efforts to make any needed changes.

Proposed Order Revisions

The Commission's Analysis and Conclusion at page 32 of the Proposed Order should be modified as shown below.

> This Docket is more than six years old. Delaying the implementation of a revised Part 280 for an extended period of time after its adoption is not consistent with the public interest. Nevertheless, the ~~overwhelming~~ weight of the evidence suggests that some time should be allowed for permanent system or process modifications to conform ~~conforming~~ utility systems to these rules ~~will be expensive and time consuming~~. Per ~~ComEd's~~ the suggestions of ComEd and GCI, the Commission finds that it will require implementation of each requirement immediately where possible or, where a need for delay to implement permanent system changes is shown, as quickly as reasonably practicable, but in no event later than 24 months from the date of this order.~~the effectiveness of the rules~~, The Commission emphasizes the high priority it gives to its directive to implement new provisions immediately or "as quickly as practicable." That priority should be reflected in the utility requests, which should only delays for permanent system or process changes, with interim measures in place during the delay. And any allowed delays shall continue no longer than the circumstances found to justify the waiver, as attested annually by an officer of the utility.
>
> A utility seeking such waivers or modifications shall provide in its filing requesting a delay the information detailed in the initial brief of GCI. In summary, that showing should include evidence justifying the delay, itemization of all affected Part 280 sections, a descriptions of the specific project(s) required, and an estimated completion/implementation date) for each project, in a formal

submission to the Commission. The utility's submission shall also detail the interim measures the utility will put in place during the period of delay for implementation of the permanent changes for which the waiver is sought. ~~and that~~ Further, each utility will be required to post and update a "checklist" on its website so that the public can be informed when the utility has completed any permanent system changes needed to bring ~~brought~~ itself into compliance with each new requirement of Part 280 as rewritten. For each delayed Part 280 provision, the website should detail: the specific projects that must be completed for implementation and an expected "as quickly as reasonably practicable" date of completion, both regularly updated.

Proposed Rule Revisions

In addition, the language of Part 280 Section 280.15 should be modified shown in the following legislative mark-up.

> The Commission shall require implementation of each requirement immediately, or as quickly as reasonably practicable if a waiver based on particularized information (including interim solutions) is granted, but in no event later than 24 months from the ~~effective~~ date of the First Notice order for the rules, and that each utility post and update a "checklist" on its website so that the public can be informed when the utility has completed the permanent changes needed for ~~brought itself into~~ compliance with each new requirement of Part 280 as rewritten.

Section 280.20 Definition of Medical Certificate

EXCEPTION # 2

GCI take exception to the Proposed Order's conclusion on page 43 that a definition of "Medical Certificate" be included in the Rule, consistent with a rule suggested by MCPU. While GCI do not object to the inclusion of such a definition, they believe that the Commission must adopt Staff's proposal to edit MCPU's original language in order to comply with medical privacy laws. GCI support Staff's recommendation that the definition for "medical certificate" be purged

of language requiring medical professional or boards of health making the certification to divulge information to the utility concerning the patient's medical condition. GCI agrees with Staff's edits to the draft rule that recognize medical privacy laws. Staff Ex. 2.0 at 9:182-184.

Proposed Order Revision

The Commission Analysis and Conclusion on page 43 of the Proposed Order should be modified as follows to reflect the First Notice Proposed Rule's adoption of Staff's recommendation regarding the definition of "Medical Certificate":

> The Commission agrees with MCPU's suggestion that the term Medical Certificate be defined in the Rule. The Commission finds that the First Notice Proposed Rules shall include a definition similar to that suggested by Staff, in order to comply with medical privacy laws. The medical certificate definition should be written to ensure that medical professionals, including physicians, or a board of health, do not divulge the details of a patient's medical condition to a utility through the issuance of a medical certificate. ~~MCPU.~~

Proposed Rule Revision

There is no need for a proposed rule revision, as the rule as set forth in Section 280.20 in the First Notice Proposed Rules properly excludes any requirements to divulge the nature of a patient's medical condition, consistent with Staff's recommendation.

Section 280.30 Application

Subsection 280.30(b) Information Requirements

EXCEPTION # 4

Section 280.30 governs the process that establishes the relationship between a utility and its future customers. The Proposed Order's recommended rule puts applicants at a severe disadvantage, by establishing that relationship while the utility has -- but is not required to share with applicants -- basic information about the applicant's rights, the utility's obligations, and the

application process itself. The Proposed Order's application rule contains no requirement for disclosure of the Part 280 provisions respecting deposit requirements, special low-income accommodations, or the application process in a manner that aids applicants for service.

New applicants (especially those from outside Illinois) will likely have limited familiarity with customers' rights and obligations under Illinois' new rules, the rights and obligations of the utility under the revised Part 280, or the utility's practices. The only way applicants can be assured such important information is available to them in a timely manner is through a requirement that the applicant's utility provide it. But the Proposed Order's recommended Section 280.30 leaves provision of such information to the utility's discretion. *See* Jun 9 Tr. at 956-957; May 25 Tr. at 304-305. GCI have emphasized the need for timely disclosure of information important to new applicants. (*See, e.g.*, GCI Ex. 1.0 at 5:111-5:134). The singular failing of the Proposed Order's rule (and of current utility practices) is that there is no assurance that applicants will be informed of their rights and options at a point in time when an applicant can meaningfully exercise those rights or options – that is, during the application process. *See* Jun 8 Tr. at 771-772; May 25 Tr. at 216-219, 243, 305, 335, 343-344; Jun 9 Tr. at 956-957.

GCI ask that the rule be amended to require timely disclosure of customer deposit requirements, the special rights of low-income applicants, and applicants' dispute resolution rights. Some utilities appear to oppose providing customers information on their rights and options simply because such information could make their interactions less convenient for the utility. *See*, e.g., June 9, 2011 Tr. at 912-913, 950; ComEd Ex. 3.0 at 14:300-305 ("For example, specifically mentioning to the customer at the outset of the application process that he or she cannot be denied service for refusing to provide his or her social security number may cause some customers, who have not previously given any thought to such a decision, to consider....").

Yet, the recommended Section 280.30(a) makes applicants for utility service to open that new relationship in ignorance – unless the utility decides to favor the applicant with notification of her rights.

GCI's proposed disclosure requirements would ensure that applicants receive important information directly relevant to decisions applicants make in applying for service. The Commission could not meet the stated objective of "fair and equitable procedures" (Section 280.05) if it relies on utility discretion to assure that customers are informed of their rights under Part 280. Utility applicants and customers should be so informed, when the information is most relevant and needed, not if and when the utility chooses. Requirements for disclosure upon request – by an applicant likely unaware of that option – or later through other means are not likely to aid an applicant at the time of the application for service.

Simple changes to the recommended rule GCI proposed can assure that customers are timely provided the information they need for informed decisions during the application process. The related provisions governing customer identification are discussed immediately below.

Proposed Order Revisions

The Commission's Analysis and Conclusion respecting this subsection (at page 52) should be modified as shown below.

> The Commission finds that Staff's suggested language is reasonable and appropriate and should be adopted. The Commission also finds that Staff's language should be amended to incorporate GCI's proposal to require that utilities inform applicants of their rights and options relevant to the application process. The Commission could not be assured without such notification that prospective new utility customers could make use of the important revisions we adopt in this order at the time they are most relevant, during the application process.

Proposed Rule Revisions

In addition, the language of Part 280 Section 280.30(b) should be modified shown in the following legislative mark-up.

> (b) Information requirements: At the time of application, the utility shall inform applicants of applicable criteria for new and current customers, the rights of low income customers with respect to deposit requirements and how to qualify for those accommodations, and the customer's dispute resolution rights as set forth in these rules. The utility shall make available a full description of the utility's application process, including the information described above and all forms of acceptable identification, for review in the utility's tariff with the Commission, on the utility's website, and mail a printed version to applicants or customers who request a copy.

Subsection 280.30(d) Application Content

EXCEPTION # 5

Though it is fashionable among gatekeepers of all kinds to demand "government issued photo" identification ("ID") for almost any activity, many customers whom monopoly utilities are obliged to serve do not have such identification. More important, utilities apparently have managed for years (certainly since neighborhood offices began to disappear) to provide service to many paying customers without actually using such identification documents. The Proposed Order perpetuates utility discretion to require photo ID or to ignore the requirement, without explanation or consistency in its application. Because there are few places for customers to present required ID to the utility, the requirement may impose additional costs or delays on economically vulnerable applicants who must use commercial surrogates for utility public offices. Utility practices under this provision should be closely monitored to prevent disparate impacts on vulnerable customer groups.

GCI also propose clarification of certain provisions of this rule. In particular, references to "valid" "government issued photo ID" should be clarified to include student IDs from a public school or university. While the qualification "valid" is a sensible requirement for businesses using incorporation or business license documents, individual customers should not be denied service because, for example, a drivers license may have expired and not valid for driving. The usefulness of the photo ID as identification is unimpaired. To avoid confusion, GCI suggest that the rule be modified to require that IDs instead be "verifiable."

Proposed Order Revisions

The Commission's Analysis and Conclusion respecting this subsection (at page 68) should be modified as shown below.

> The Commission finds that a reasonable compromise of the positions articulated by the parties is that the applicant may be asked to provide up to two forms of identification, one of which should be a ~~government issued~~ verifiable picture ID,(this would automatically include ID from public educational institutions since that can be verified by calling the enrollment office.) The Commission agrees with many of the utilities in finding that the list of types of acceptable identification should not include credit cards. Credit card companies are not willing to provide name, account, or other identifying information in response to a third party inquiry.

Proposed Rule Revisions

In addition, the language of Part 280 Section 280.30(d)(2) should be modified as follows:

> The utility may not oblige an applicant to provide one form of identification in favor of another, so long as one form is a ~~government issued~~ verifiable photo ID and the identification provided is ~~valid~~ verifiable and accurate.

Subsection 280.30(e) Requirements for successful application [Transfer of Service]

EXCEPTION # 6

The Proposed Order's version of subsection 280.30(e)(2) requires that a customer make full payment of past due debts to the utility to transfer service. At the utility's option (except during heating season, when a different rule applies), a payment plan may be offered. GCI recommends that the draft rule be modified so that a payment plan to retire a transferring customer's past due debt cannot be withheld by the utility.

GCI's proposed change does not simply maintain the customer's current bill payment status. It advances utility collection efforts, but it also prevents utilities from using transfer of service as leverage to force an otherwise unavailable, onerous collection action. Indeed, the recommended provision is less favorable to customers than the Proposed Order's recommended treatment of customers who transfer service to a new location while already on a deferred payment arrangement ("DPA") for past due debts. Under the recommended DPA provision, Section 280.120(d), customers would retain (or improve) their existing status, without being subject to new burdens simply because of a change in location.

GCI's proposed rule would require the transferring customer either (a) to pay any past due debt in full and enter a payment plan for any required deposit or (b) to pay the deposit in full and enter a payment plan to retire the past due debt. Either option enhances the utility's recovery of past due debts that might otherwise be unrecoverable -- through a combination of immediate payment of the entire debt or a full deposit and an agreement for future payment of the remaining amount. May 25 Tr. at 336-337; *see* GCI Init. Br. at 32-33. GCI's modification provides a path for customers transferring service to retain essential utility services, while assisting the utility's collection of past due amounts. The Proposed Order's recommendation could deny existing customers essential utility services at a new residence.

Proposed Order Revisions

The Commission's Analysis and Conclusion respecting this subsection (at page 72) should be modified as shown below.

> The Commission agrees with GCI's ~~Staff's~~ position that payment plans on past debts for applicants that are ~~must remain~~ optional with the utility may allow utilities to use a simple transfer of service as a trigger for otherwise unavailable, collection actions. In fact, Staff's proposal can be less favorable to affected customers than the Commission's rules governing trnasfers of service by customers already on a DPA because of past due debts. The utility should have the obligation ~~ability~~ to negotiate ~~at its own discretion~~ a restoration or new activation of service for an applicant who owes the utility an unpaid debt. The Commission finds that ~~Staff's~~GCI's proposed language as modified on Attachment A is reasonable and appropriate.

Proposed Rule Revisions

In addition, the language of Part 280 Section 280.30(e)(2) should be modified as follows:

> 2) Any past due debts for utility services still owing to the utility by the applicant shall be identified and governed by the following provisions: the Applicant must
> A) pay past due debt in full, and if otherwise required, enter into a payment plan for the deposit amount; or
> B) ~~At the utility's discretion, e~~Enter into a payment agreement to retire the past due debt and if otherwise required, pay the deposit amount in full; or
> C) Make a down payment and agreement to retire the debt under the requirements of Section 280.180 Reconnection of Former Residential Customers for the Heating Season.

Subsection 280.30(j)(1) [Service Activation Period]

EXCEPTION # 7

This provision governs a new customer's first experience with an Illinois utility regarding the adequacy of its service -- the delay in activation of service. Unfortunately, the Proposed

Order defers to utilities' current staffing levels and preferred work schedules, instead of recognizing prevailing standards of utility service. The Proposed Order adopts Staff's proposal allowing electric utilities four calendar days to establish service and gas utilities seven days to activate service. That proposal does not reflect a determination of reasonable activation periods, but an effort to compromise between "what can reasonably be achieved by utilities" and a new customer's desire to quickly obtain an essential service from the monopoly provider. PO at 75. The Proposed Order correctly rejects utility proposals to use business day periods, which could extend delays in service activation and deadlines for bill credits by an additional three days on holiday weekends.

After reviewing the activation schedules of utilities in other states and taking account of the nature of the services being sought, GCI proposed to modify Staff's proposal so that electric, water, and sewer utilities have three days activate service for a successful applicant. (*See, e.g.*, GCI Ex. 5.0 at 14-15.) Gas utilities would have up to five days after an application has been approved.

The Proposed Order mistakenly defines appropriate activation periods based on current utility personnel staffing levels and resources and utilities' desire to avoid weekend activation work. Those constraints are the result of years of utilities' aggressive workforce reduction and cost cutting efforts. Those limitations should not be permanently embedded in the Commission's rules. The statutory standard of safe and adequate service is not defined in terms of the resources utilities would prefer to deploy to a particular task. The Commission clearly would not accept a three week delay in service activation, no matter what workforce level a utility preferred. Illinois utilities should operate to meet the demand for service activation. Customer service should not be watered down to match utility management preferences.

The question in this proceeding is whether the recommended activation periods -- which can result in a delay of up to a week for provision of an essential utility service -- meet the statutory requirement for utility service that promotes the health and safety of its customers, is "in all respects adequate," and is provided on just and reasonable terms that furnish service "without delay." 220 ILCS 5/8-101. There is no evidence in this record that Illinois utilities are incapable of activating utility services as quickly as utilities in other states or that the statutory requirement for service "without delay" is subordinated to utility management preferences. The recommended provision does not satisfy the statutory standard.

Proposed Order Revisions

The Commission's Analysis and Conclusion respecting this subsection (at page 78) should be modified as shown below.

> The Commission finds that Staff's proposed language defers unduly to limitations imposed by current utility staffing levels, which have been affected by utility resource reduction decisions, and does not give enough consideration to the adequacy of practices to activate essentail utility services. The record does not establish that activation periods that approximate industry best practices cannot be achieved by Illinois utilities. The Commission finds the GCI proposal for activation within three days (electric) or five days (gas) is reasonable and appropriate.

Proposed Rule Revisions

In addition, the language of Part 280 Section 280.30(j)(1) and 280.30(j)(2) should be modified as follows:

> j) Timeline for service activation:
>
> 1) Electric, water, or sewer utilities: Absent any delays caused by construction or other equipment work required for service activation, an electric, water or sewer utility shall activate service for a successful applicant at the

earliest possible date, but no more than ~~four~~ three calendar days after the approval of the application, unless the applicant requests a later date of activation.
2) Gas utilities: Absent any delays caused by construction or other equipment work required for service activation, a gas utility shall activate service for a successful applicant at the earliest possible date, but no more than ~~seven~~ five calendar days after the approval of the application, unless the applicant requests a later date of activation.

Section 280.40 Deposits

Subsection 280.40(b)(2) Disclosures

EXCEPTION # 8

The Proposed Order's recommended rule provides that certain written disclosures must be made before a deposit is assessed, which comports with GCI's view that the benefit of disclosures regarding deposits are lost if the notification process does not occur prior to the assessment of the deposit. However, the list of items to be disclosed fails to include one of the most pivotal pieces of information – that the customer has the option of avoiding paying a deposit based on past due bills by entering a deferred payment agreement ("DPA"). Notification of this information is critical because the customer must take action to avoid paying a deposit before that deposit is levied against him, which a customer can do only if informed about his rights.

Section 280.40(e)(2) specifically provides customers the right of electing to pay the deposit through an existing DPA:

> 2) A present residential customer may avoid the requirement to pay a deposit under subsection (e)(1) by entering into and keeping current with a deferred payment arrangement (DPA) for the unpaid balance, so long as the customer enters the DPA prior to the assessment of the deposit.

Information about this right, however, is not mentioned in the written disclosure requirements. Not including this disclosure would effectively deprive these customers of their rights by denying them knowledge that the option was available to them in the first place. That lack of notice would prevent them from exercising their rights with regard to including the deposit amount in a DPA.

Proposed Order Revisions

Accordingly, the Commission Analysis and Conclusion on page 93 of the Proposed Order should be modified as follows:

> The Commission generally finds that Staff's suggested language is a reasonable compromise and hereby adopts it, with one additional disclosure proposed by GCI: that the customer's has the ability to pay the deposit by entering into a deferred payment agreement, as provided in Section 280.40(e)(2). The language balances the rights of customers and utilities. It is important that customers receive prior notice of the imposition of a deposit and of the rules that apply.

Proposed Rule Revisions

Section 280.40(b)(2) should include the following provision, which was marked as section 280.40(b)(2)(H) in GCI's proposed rule (GCI Ex. 5.1):

H) The customer has the option of paying the deposit or entering a deferred payment agreement (as provided in Section 280.40(e)(2)).

Subsection 280.40(d)(3) Credit Scoring

EXCEPTION # 9

The Proposed Order adopts Staff's proposed Deposit section, at Part 280.40(d)(3), which permits utilities to examine a utility service applicant's credit score before providing service, and if the score fails to meet the "minimum standard of the credit scoring system described in the utility's tariff," permits a utility to require a deposit of up to $1/6^{th}$ of the estimated annual charges.

Proposed Order at 96; Staff Ex. 3.0, Attachment A at 14, Part 280.40(d) (3). The Proposed Order points to existing Commission policy as evidence of the reasonableness and prudence of Staff's proposal, with no further justification for maintaining the policy. The record evidence, however, supports a modification of that rule and elimination of credit information, other than utility bill payment history, as a basis for assessing a deposit on applicants for service.

GCI witness Sandra Marcelin-Reme testified that based on her experience, the most relevant predictor of customer utility bill payment is past customer *utility* billing history. Ms. Marcelin-Reme, whose professional career includes more than 15 years of consumer advocacy work as a consumer rights counselor, organizer, legal assistant and consumer advocacy director, stated that this billing history is the primary criteria on which the utility should decide whether a deposit is warranted. She noted that, given the essential nature of utility service, customers in her experience tend to pay their utility bills before others, such as credit cards. GCI Ex. 2.0 at 7: 183-188. She recommended that Staff's proposed credit score provision be removed from this section.

GCI witness Alexander concurred on this point. She noted that there simply is no evidence that an applicant's credit score based on non-utility credit transactions is an indication of risk of nonpayment for utility bills. Many consumers will make significant sacrifices to make regular utility payments and forego other essential expenditures on medications, car payments, and other consumer goods in order to maintain essential utility services. GCI Ex. 5.0 at 19: 419-434. It should be noted, too, that utilities, unlike other unregulated businesses, provide services deemed essential by the General Assembly. 220 ILCS 5/1-102. A deposit is a barrier to obtaining essential utility services and should only be imposed when there is clear evidence that the applicant has incurred a prior bad debt for utility, service, been disconnected for nonpayment

of utility service, or has otherwise violated utility regulations about tampering or theft of service. GCI Ex. 5.0 at 19: 419-434.

Using credit scores to assess whether a person qualifies for credit at a department store is not akin to the evaluation of whether an applicant for utility service should face a significant financial hurdle to assess essential utility service. Utility deposits often are what stand in the way of a low-income household retaining or obtaining necessary utility service. LIRC 2.0 at 6. Second, utility applicants who do not qualify for LIHEAP (but remain payment-challenged), or are unaware of LIHEAP availability, would be subject to significant deposit hurdles if their credit score do not pass muster. Moreover, the use of credit scores to determine deposit requirements ignores the fact that credit reports may contain errors. The use of credit scoring also wrongly presumes that customers without a score are credit risks.

The challenge of scraping together the equivalent cost of two months' worth of utility service for a deposit as a result of low credit scores, as the Proposed Order's recommended rule would require, is an obstacle for many if not most applicants -- not only those who officially qualify for low-income assistance programs. Creating an exemption for LIHEAP- qualifying customers from this credit-check practice simply does not go far enough in removing the financial obstacles to obtaining utility service.

It should be noted, too, that GCI is concerned that the utilities' implementation of the current rule's requirement that low income applicants be exempt from imposing a deposit based on a credit score is not routinely and properly being implemented by utilities since there is little or no publicly available data to document the utility's practices in this regard and ensure that a uniform approach is taken to apply this important customer protection. This lack of data, and the likelihood that customers who currently qualify for the exemption from credit score review may

nevertheless be assessed a deposit by utilities, bolsters GCI's argument that no credit score data should be used to impose deposit requirements for any applicants.

While GCI appreciates utility efforts to minimize uncollectible expense, those efforts must be balanced with the need to make essential utility service available and affordable. Enabling utility demands for deposits based on credit scores adds yet another obstacle to payment-challenged customers obtaining and maintaining utility service.

Finally, other states do not permit utility demands for deposits based on customer credit scores. New Hampshire, for example, limits a utility's ability to obtain a deposit from an applicant to those circumstances when (1) the applicant has an undisputed overdue balance; (2) when a utility has obtained a judgment against the individual; (3) the utility has disconnected the customer's service previously; or (4) the applicant is unable to provide satisfactory evidence that he or she intends to remain at the location for a period of 12 months. New Hampshire Admin. Code Puc 1203.03(a). No mention of the use of credit scores is contained in the provision.

For all of these reasons, the Commission should reject the Proposed Order's recommendation to permit utilities to assess deposits based on consumer credit scores.

Proposed Order Revisions

In accordance with the arguments presented above, GCI urges the Commission to modify the Proposed Order's conclusion on this issue at page 96 as follows:

> The Commission finds that the evidentiary record supports modification of the existing rule that permits utilities to run credit checks of applicants for utility service based on non-utility payment history and assess a deposit based on that history. GCI witness Sandra Marcelin-Reme testified that based on her experience, the most relevant predictor of customer utility bill payment is past customer *utility* billing history. Given the essential nature of utility service, the evidence suggests that customers tend

to pay their utility bills before others, such as credit cards. GCI Ex. 2.0 at 7. In short, there simply is no evidence that an applicant's credit score based on non-utility credit transactions is an indication of risk of nonpayment for utility bills. Many consumers will make significant sacrifices to make regular utility payments and forego other essential expenditures on medications, car payments, and other consumer goods in order to maintain essential utility services. A deposit is a barrier to obtaining essential utility services and should only be imposed when there is clear evidence that the applicant has incurred a prior bad debt for utility, service, been disconnected for nonpayment of utility service, or has otherwise violated utility regulations about tampering or theft of service. GCI Ex. 5.0 at 19: 419-434. The challenge of scraping together the equivalent cost of two months' worth of utility service for a deposit as a result of low credit scores, as Staff's proposed rule would require, is an obstacle for many if not most applicants -- not only those who officially qualify for low-income assistance programs. Creating an exemption for LIHEAP- qualifying customers from this credit-check practice simply does not go far enough in removing the financial obstacles to obtaining utility service.

The Commission also acknowledges that it is unclear whether utilities' implementation of the current rule's requirement that low income applicants be exempt from imposing a deposit based on a credit score is not routinely and properly being implemented by utilities, since there is little or no publicly available data to document the utility's practices in this regard and ensure that a uniform approach is taken to apply this important customer protection. This lack of data, and the likelihood that customers who currently qualify for the exemption from credit score review may nevertheless be assessed a deposit by utilities, bolsters GCI's argument that no credit score data should be used to impose deposit requirements for any applicants. Accordingly, the credit check provision proposed by Staff for utility service applicants is hereby rejected.

~~Staff's suggested language is reasonable and appropriate. The Commission agrees that the use of credit scoring in regard to~~

~~deposits for applicants is prudent and consistent with Commission policy.~~

Proposed Rule Revisions

In accordance with the arguments presented above, GCI urge the Commission to modify the rule adopted in the Proposed Order as follows:

d) Applicant deposits: the utility shall have the right to require a deposit of an applicant under the following conditions:

1) The applicant was previously disconnected for non-payment of bill amounts owing to the utility for the same class and type of service;

2) The applicant failed to pay a final bill owing to the utility for the same class and type of service;

~~3) The residential applicant's credit score fails to meet the minimum standard of the credit scoring system described in the utility's tariff;~~

3~~4~~) The non-residential applicant fails to provide satisfactory credit references, including past utility service records or favorable history with other creditors. The utility shall file a tariff with the Commission describing its criteria for non-residential applicants to establish satisfactory credit for this purpose;

4~~5~~) The utility has proof that the applicant previously benefitted from tampering as described in Section 280.200;

5~~6~~) The utility has proof that the conditions described in Section 280.210 Payment Avoidance by Location (PAL) exist for the applicant.

Subsection 280.40(e)

EXCEPTION # 10

Under the current rule, customers are exempt from deposit requirements for limited late payments if they have had service for longer than 24 months. 83 Ill. Admin Code Part 280.60(a).

The ALJ's Proposed Rule eliminates this exemption, placing good, paying, tenured customers in the same position as chronic non-payers. There is a real danger that this omission will create situations where customers are levied several deposits on top of one another, imposing onerous requirements on customers and making it more – not less -- difficult for the customer to keep up with payments. The Proposed Order's recommended rule ignores the creditworthiness that is established by long-term utility service. Customers do not achieve more than two years of service without a history of paying their bills, even if payments are sometimes late.

The Proposed Order recommends a rule that punishes those who pay late, but still pay their bill, even with only one month of delinquency. This protection for long term customers does **not** eliminate the usual collection and disconnection remedies available to the utility. It only prevents an exacerbation of payment difficulties by imposing deposit requirements on customers with a multi-year history of payment. For example, a customer could be doing her best to pay at least a portion of her bill every month, but the remaining balance on each of those bills would be considered delinquent. So, after four months of paying anything less than the full balance – even when the customer is making a good faith effort to pay *something* – the customer would be subject a deposit under the proposed rule. Additionally, this rule also allows a utility to charge a deposit several times over the course of the customer's term of service. Thus, the Proposed Order's recommended rule punishes good faith efforts to pay utility bills by making those already hard-to-afford bills more onerous.

GCI recommend that the provision in the current rule that exempts utility customers that have had service for more than 24 months from being charged a deposit (except in the case of tampering) be added back to Staff's proposed rule as section 280.40(e)(C). Customers who have successfully retained utility service for twenty-four consecutive months have demonstrated that

they are not a credit risk, and customers who pay late are not necessarily a non-payment risk, as paying late (but paying) is often a chronic fact of life for many low income and working poor customers. GCI Ex. 5.0 at 18:396-99. In fact, many customers who have to choose between paying the electric or gas bill and buying needed medications or other household necessities must show proof of a pending disconnection notice or other evidence of crisis in order to trigger financial assistance and bill payment aid. *Id*. at 18:399-403. Furthermore, the utility is already reimbursed for late payment in the form of a late payment charge. *Id*. at 18:406-408. Customers who have paid their bills and maintained utility service for 24 months should be protected from the burdensome imposition of a deposit unless tampering has been demonstrated.

The requirement that the customer's account have an undisputed past due balance unpaid for over 30 days before a deposit can be assessed, does not alleviate GCI's concerns that the proposed language will add a deposit to what could be an already unaffordable bill for individuals earning lower or fixed incomes. This additional burden will likely adversely impact that customer's ability to pay the bill – not make it more likely. This is especially true in light of the current economic recession. The proposed rule will simply cast too wide a net and impose a hardship on customers already struggling, but succeeding in large part, to pay their bills.

Proposed Order Revisions

For these reasons, GCI recommends the Commission modify the Commission Analysis and Conclusion on page 101 of the Proposed Order as follows:

> The Commission finds the Staff's proposed language is reasonable and should be adopted, with the additional safeguard of retaining the existing exemption for customers with a tenure of 24 or more months. The safeguards incorporated in the proposed rule for existing customers are substantial. Deposit requirements should only be imposed if: 1) the customer meets the criteria for a deposit and refuses to enter in a DPA; or 2) if the customer fails to keep

current on a DPA; or 3) the utility has proof that the customer has benefitted from tampering. ~~The 24 month rule is illogical and the Commission finds that its elimination is appropriate.~~

The final rule should retain the current provision exempting customers of over 24 months, unless tampering is present:

Proposed Rule Revisions

Accordingly, the final rule should add the following provision to 280.40(e)(1)(C):

> C) Notwithstanding A or B, customers who have received utility service for twenty-four months may be charged a deposit only if the customer's wires, pipes, meters or other service equipment have been tampered with and the customer enjoyed the benefit of tampering.

EXCEPTION # 11

Subsection 280.40(i)(2)

The ALJ's Proposed Rule adopts ComEd's proposal to change the parameters for the refund of a deposit, giving the utility discretion as to the form of refund (credit on account vs. issuance of a check), if the amount to be refunded is less than 125% of the customer's average monthly bill. The current rule includes the same language, except that the utility may not insist on a bill credit if the refund amount exceeds 25% instead of 125%. GCI believe the recommended change should be rejected, and the language in the existing rule on this provision be retained. GCI find the expansion of utility discretion under this provision unreasonable. Staff points out that that the maximum deposit a utility may demand ($1/6^{th}$ of a customer's average annual bill) would be equivalent to 200% of an average monthly bill, triggering the cash refund requirement. However, that analysis does not take account of the fact that the language in this section of the rule specifies that the refund amount is to be reduced by outstanding debts ("less past due unpaid utility service amounts"). Thus, even where the deposit was 200% of the

average monthly balance, the actual refund amount may be far lower than 125% of the average monthly bill.

Low and fixed income customers, who could use this money to pay for other necessities would not then have those funds available, because the utilities could choose to hold a substantial (for customers in need) refund amount for payment of its own future bills. Thus, GCI recommend that the existing language in Section 280.40(i)(2) be retained to limit the utilities discretion regarding the form of refund for deposits to an amount less than 25% of the customers average monthly bill.

Proposed Order Revisions

Accordingly, GCI recommend the Commission modify the Commission Conclusion on page 108 of the Proposed Order as follows:

> ComEd's suggested modification of Staff's proposed language for this subsection requiring a separate payment (instead of a bill credit) if the amount due the customer is 125% rather than 25% (as suggested by Staff) of the customer's average monthly bill amount is not reasonable, because the refund amount could be far lower than the actual deposit if a previous unpaid balance is deducted from it. ~~However, because the residential deposit amount is 200% of the residential or small business customer average bill and 400% of a large business customer bill, it is not clear how often this language will be relevant.~~ Lower and fixed income customers may need such funds for other necessities. Also, because the deposit is customer funds, it should be returned in the manner preferred by the customer. The Commission ~~incorporates Staff's proposed language with the suggested amendment in the proposed First Notice Order~~ retains the existing 25% threshold for utility discretion on payment of the refund as the most reasonable.

Proposed Rule Revisions

The Proposed Rule should be modified as follows:

> 2) For all other current customers, the refund, less past due unpaid utility service amounts, shall be by separate payment issued to the customer, except when the customer requests a credit to the

account instead of a refund payment. The refund or credit shall be issued within 30 days of the event that triggers it. The utility shall not be obliged to issue the refund by separate payment instead of a credit if the amount to be refunded does not exceed ~~1~~25% of the customer's average monthly bill amount.

Section 280.90 Estimated Bills

EXCEPTION # 12

The Proposed Order's recommended rule rejects GCI's proposal to require utilities to routinely issue every bill based on an actual meter read, and instead adopts Staff's proposed language. The Proposed Order's recommended rule allows a utility to issue an estimated bill as long as the utility has taken an actual reading in the last 60 days. This language does not address the significant concerns GCI has with the widespread utility practice of estimating bills for potentially many months on end and fails to provide adequate protections from utility abuse of estimated readings and the resulting harm to customers. GCI submit that it is not unreasonable to require utilities to perform actual readings every month with fair exceptions for emergency circumstances, especially in light of the fact that utilities specifically recover the costs of meter reading in a separate charge on the bill.

CUB's consumer advocacy expert Sandra Marcelin-Reme testified that problems surrounding multiple estimated bills drive a significant number of CUB complaints regarding abnormally high bills. GCI Ex. 2.0 at 12:312-17. This is because if the estimates are not accurate, and instead underestimate usage, customers are then hit unexpectedly with a bill based on actual usage when the bill is "trued up," or corrected for months of consecutively estimated bills. *Id*. at 12:314-16. The end result is a bill that may be substantially higher than the previous month's bill and not reflective of the customer's actual usage. The bill may be so high the customer cannot afford to pay it, yet full payment by the applicable due date is still required.

"Moreover, despite a regulation that provides the customer the option of a deferred payment arrangement, most consumers are never informed of this right." *Id*. at 13:322-24. These problems are further exacerbated by the fact that consumers are often either not aware that bills are estimated or assume that the estimates are in line with their actual usage. *Id*. At 12:314-316.

Furthermore, the Proposed Order's recommended rule does not address the problem with estimates spanning different heating seasons or the significant potential for subsidization of one customer to another when estimates are used for beginning and/or ending reads. The recommended rule adopted Staff's language, which specifies that, for beginning and ending service, "unless a utility has taken an actual reading of the meter within the past 60 days, it shall take an actual reading of the meter as prescribed in this subsection." PO, Att. 1 at 29. The 60-day threshold, however, does not reduce the likelihood that a customer pays for the usage of a previous customer or otherwise overpays for service estimates are used for beginning and/or ending reads. GCI Ex. 2.0 at 13:228-40. This is especially true if the previous 60 days was during a different usage season, which would potentially create an inaccurate estimate. An actual electric bill from a hot August month should not be used as the basis for determining how to estimate a cool October electric bill. *Id*. at 13:340-42. Customers should not be compelled to accept a final bill based on two consecutive months of estimates or on any estimate if they request an actual meter reading.

The potential subsidization between customers when service is initiated or terminated on an estimated bill justifies the imposition of a stricter policy in this regard, because of the high potential for subsidization from one customer to another. For example, if service at one residence is terminated on an estimated read that is lower than the actual meter usage, and new service is initiated at that same residence on the same estimated read, the new occupant will pay

for the under billed portion of the previous customer. See June 9, 2011 tr. at 975:7-22; see also June 7, 2011 tr. at 535-36:22-24, 1-8 (MidAmerican witness agreed to this same premise, but pointed out that the example assumes a flawed utility estimation logic). By extension, if the estimate was higher than the actual meter read, then the previous occupant would have paid more than their actual usage and the new occupant will pay less than their actual usage (when the actual read is taken, it will appear as if the new occupant used less units).

The record makes clear that inequities are likely to result with estimated meter reads at the beginning and ending of service. Because customers are often not aware their bills are estimated, or the options available to them to avoid paying large true-up bills, this common utility practice of continually estimating bills – both at beginning and ending of service and for many months or even years in between – creates customer confusion, dissatisfaction, inequities relating to subsidization, and potentially contributes to disconnections from essential utility service. Similarly, a practice of using the rules limitations as a floor instead of a ceiling, easily leads to an improper routine practice of taking readings only every other month.

GCI witness Alexander testified that utilities should not be able to adopt a routine estimated bill practice at their discretion without Commission approval; nor should they be allowed to adopt changes to this practice without Commission approval. GCI Ex. 5.0 at 23-24:526-29. Rather, utilities should be required to seek Commission approval of a practice of estimating bills and the Commission should specifically investigate and approve of that policy on a utility-by-utility basis. *Id*. This Commission approval should include an analysis and approval of the utility's methodology for calculating estimated bills. *Id*. GCI recommended that the Commission adopt the Missouri Code of Regulations, which reflects this policy and requires utilities to read meters monthly, while allowing for appropriate exceptions. GCI's recommended

language adequately resolves the issues and problems associated with the widespread use of estimating usage of utility service.

Proposed Order Revisions

Accordingly, the Commission's Analysis and Conclusion on page 143 of the Proposed Order should be modified as follows:

> The Commission finds generally that ~~Staff's~~ GCI's proposed language for Section 280.90 is reasonable and should be adopted.

Proposed Rule Revisions

GCI recommend the Proposed Order's recommended Part 280.90 rule after Section (a) be deleted in its entirety and replaced with the following rule (the reference to the Missouri rule on disconnection in section 4 below was changed to comport with the Illinois rule):

> (b) Each billing statement rendered by a utility shall be computed on the actual usage during the billing period except as follows:
>
> (1) A utility may render a bill based on estimated usage— 1. To seasonally billed customers, provided an appropriate tariff is on file with the commission and an actual reading is obtained before each change in the seasonal cycle; 2. When extreme weather conditions, emergencies, labor agreements or work stoppages prevent actual meter readings; and 3. When the utility is unable to obtain access to the customer's premises for the purpose of reading the meter or when the customer makes reading the meter unnecessarily difficult. If the utility is unable to obtain an actual meter reading for these reasons, where practicable it shall undertake reasonable alternatives to obtain a customer reading of the meter, such as mailing or leaving postpaid, preaddressed postcards upon which the customer may note the reading unless the customer requests otherwise;
>
> (2) A utility shall not render a bill based on estimated usage for more than three (3) consecutive billing periods[1] or one (1) year,

[1] GCI recommend that the maximum number of estimated bills be limited to two consecutive bills.

whichever is less, except under conditions described in subsection (a)(1) of this rule;

(3) Under no circumstances shall a utility render a bill based on estimated usage— 1. Unless the estimating procedures employed by the utility and any substantive changes to those procedures have been approved by the commission; 2. As a customer's initial or final bill for service unless conditions beyond the control of the utility prevent an actual meter reading;

(4) When a utility renders an estimated bill in accordance with these rules, it shall— 1. Maintain accurate records of the reasons for the estimate and the effort made to secure an actual reading; 2. Clearly and conspicuously note on the bill that it is based on estimated usage; and 3. Use customer-supplied readings, whenever possible, to determine usage; and

(5) When a utility underestimates a customer's usage, the customer shall be given the opportunity, if requested, to make payment in installments.[2]

(c) If a utility is unable to obtain an actual meter reading for three (3) consecutive billing[3] periods, the utility shall advise the customer by first class mail or personal delivery that the bills being rendered are estimated, that estimation may not reflect the actual usage and that the customer may read and report electric, gas or water usage to the utility on a regular basis. The procedure by which this reading and reporting may be initiated shall be explained. A utility shall attempt to secure an actual meter reading from customers reporting their own usage at least annually[4], except for quarterly-billing utilities in which case it shall be every two (2) years. These attempts shall include personal contact with the customer to advise the customer of the regular meter reading day. The utility shall offer appointments for meter readings on Saturday or prior to 9:00 p.m. on weekdays. The utility's obligation to make appointments shall begin only after a tariff, for the appointments,

[2] GCI recommends that the proposed Part 280 revisions concerning make up bills be relied upon for this issue in Illinois.

[3] As previously indicated, GCI recommends that the rule contain a trigger of two consecutive estimated bills.

[4] The current Illinois rule in this regard is six months and GCI agrees with the current Illinois practice in this regard.

has been filed with and approved by the commission. Discontinuance of the service of a customer who is reading and reporting usage on a regular basis because of inability to secure an actual meter reading shall not be required.

(d) If a customer fails to report usage to the utility, the company shall obtain a meter reading at least annually.[5] The utility shall notify the customer that if usage is not reported regularly by the customer and if the customer fails, after written request, to grant access to the meter, then service may be discontinued pursuant to 83 Ill. Admin. Code Section 280.130.

(e) Notwithstanding section (2) of this rule, a utility may bill its customers in accordance with equal payment billing programs at the election of the utility customer, provided the equal payment billing program has been previously approved by the commission.

(f) A utility may bill its customers on a cyclical basis if the individual customer receives each billing on or about the same day of each billing period. If a utility changes a meter reading route or schedule which results in a change of nine (9) days or more of a billing cycle, notice shall be given to the affected customer at least fifteen (15) days prior to the date the customer receives a bill based on the new cycle.

Section 280.140 Disconnection for Lack of Access

EXCEPTION # 13

The recommended Section 280.140 purports to authorize utilities to disconnect essential utility service to every bill-paying customer in an entire building, as the Commission-authorized remedy for frustrated collection efforts against a single non-paying customer in the building. Group punishment of innocent, paying customers -- conscripted into a collection effort they may lack any ability to aid -- should not be codified as Commission policy. While the notification

[5] The current Illinois rule in this regard is six months and GCI agrees with the current Illinois practice in this regard.

requirements the Proposed Order added to Staff's draft rule are welcome, they merely provide a more advanced warning of this unaltered, unfair draconian measure, which denies essential utility service – even if only temporarily – to paying customers. *See* PO Att. 1, subsection 280.140(c).

Although it appears to ignore the lessons of the testimony it recounts, the Proposed Order fairly summarizes the compelling evidence against this provision. PO at 196-200. GCI urge each Commissioner to review attentively that portion of the Proposed Order before accepting the Proposed Order's recommendation for adoption of group punishment as this Commission's utility bill collection policy. Below, GCI emphasize several points that warrant repetition and deliberate consideration by the Commission.

First, the primary concern must be the danger created by the wholesale termination of service this rule contemplates. Aside from its basic unfairness, the City had three main concerns about disconnections under the proposed section: (1) the safety and health dangers for City residents affected by a building disconnection; (2) the demand on City resources from such building disconnections; and (3) possible adverse legal consequences for building owners whose properties are affected by a loss of essential utility services. City Ex. 1.0 at 3-4:53-62. Clearly, the health and safety effects of the recommended rule should be all stakeholders' paramount concern, as those effects would include hazardous situations for Chicago residents and other Illinois customers. City Ex. 1.0 at 3:53.

The City of Chicago's expert, who confronts almost daily the impacts of a loss of utility service on tenants in the City, testified about the potential danger.

> People who do not have access to utility services will sometimes go to great lengths to acquire the comforts that utility services

> provide. These measures often create dangerous and hazardous situations for the persons who undertake them.

Id. at 5:92 (describing the tragic example of a family that lost six children in a fire caused by a candle substituting for utility service). Even PGL's Mr. Robinson acknowledges that "lack of utility service in the City of Chicago can be hazardous, even life-threatening." (PGL / NSG Ex. 2.0 at 41:911-912, 42:935.) If such circumstances become more common, as this rule affirmatively contemplates, such tragedies become more likely. The Proposed Order fails to give adequate consideration to the health and safety impacts of the recommended rule on tenant-customers who have essential utility services held hostage in a contract dispute between the utility and a non-paying co-tenant.

The Proposed Order contains no discussion of these dangers, practical difficulties, or other effects of the authorized service denial. Moreover, the recommended rule leaves several critical (to affected paying customers) questions unanswered. For instance: "Is there no limit on how long customer can be held hostage?" At least one utility is prepared to leave service to tenants in the same building as the collection target disconnected indefinitely. June 7, 2011 tr. at 606-608 ("we would wait until we got access"). "Who should fairly bear the burdens of a utility's collection actions?" When there is no certainty that other tenants in the building control the meter access the utility wants, or the utility has failed to assure its access rights, there is little basis for punishing other tenants.

Second, in that connection, GCI reiterate that the recommended rule does not require that the utility undertake any effort to verify that tenants actually <u>can</u> provide the access for which utilities would deny essential utility service to an entire building of paying customers. Though the Proposed Order purports to "allow for the customers of the premises to remedy the problem

and thereby avoid disconnection," a Commission rule cannot give tenants physical control of an area where it does not exist in fact. Tenants lack assured control over spaces they do not own, and the collection target's co-tenants may have no ability to provide the physical access the utility demands to avoid or to regain their service.

Under the recommended rule, if tenants cannot provide the access the utility demands, the tenants could be without service indefinitely. Even though the recommended rule does not require verification that tenants have the ability to provide access to the space containing the utility meter, it also lacks any provision limiting service disconnections to a finite period. There must be some period after which even the utility (and the Commission) must conclude that the tenants cannot provide what the utility wants. Yet, the recommended rule does not even acknowledge that possibility.

Third, the rule shifts costs of the utility's failures in collections and facilities management onto the backs of its customers, who had no ability to manage the risks manifested in the utilities' collection and meter access problems. Though the problem this section is supposed to address arises from utility decisions about the location of its equipment on rental properties, ComEd argues that it "has no legal or contractual basis that would obligate the building owner or landlord to give ComEd the access it needs . . . ." (ComEd Ex. 3.0 at 34:760.) Either a utility has a legal basis for its presence (and a right to access its facilities) or it has put its facilities at risk through an imprudent occupancy arrangement that needs correction. Instead, ComEd blames tenants who may have even more limited rights within a property owned by their landlord. Tenants must take utility facility arrangements as they find them, and have no say in the owner's building design/management, including any arrangement between the building owner and the utility respecting the location of access to utility facilities.

The utilities now argue that tenant-customers should be responsible for correcting any such utility oversight, and that they must provide the access the utility failed to secure -- or face disconnection even if their bills are paid. This ultimatum to paying customers is not an acceptable, balanced approach to a problem, which was created by the utilities and building owners (and one non-paying customer). GCI recommend that the Commission eliminate this proposed expansion of building disconnections. The references in recommended section 280.130 should also be deleted.

If the Commission does not accept GCI's well-founded proposal to eliminate this provision, the rule is such a drastic measure that it should be modified to mitigate its unfair and potentially dangerous impacts and to limit the group punishment the rule purports to authorize.

Proposed Order Revisions

The Commission's Analysis and Conclusion respecting this subsection (at page 205) should be modified as shown below.

> The Commission finds that Staff's proposed language for Section 280.140 is not reasonable as a bill collection measure. While there are safety considerations that may compel extreme measures to gain access for regulatory purposes, such measures are less justified for meter reading. As a bill collection strategy, the Commission finds that measures such as disconnection of utility service to every customer in an entire building are not justified or reasonable. For regulatory and meter reading access only, the Commission finds that the proposed provision is acceptable and should be adopted with the provisos: 1) that the inconvenience compensation credit in Subsection 280.140(e) shall be an unprorated customer charge for one billing period. ~~Disconnecting someone's service because a neighbor has not paid a bill or allowed access is at best, a significant inconvenience.~~ If the Company thinks a building wide disconnection is necessary, it should be prepared to provide a measure of compensation to the customers in good standing worth more than the pocket change

likely to arise from a prorated customer charge; and 2) the utility shall not disconnect a building unless it has the resources in place and is prepared to reconnect service on the same day for customers who were not otherwise eligible for disconnection. ~~The Commission notes that language allowing disconnection of multi meter buildings for failure to provide access has been part of this subsection of Part 280 for many years and that its utilization by utilities has apparently not engendered the adverse consequences articulated by GCI.~~

Proposed Rule Revisions

Subsection 280.140(b)(2) should be deleted from the rule and the subsequent subsection re-designated accordingly.

Alternate Proposed Rule Revisions

If the rule's application to disconnection for non-payment is not eliminated as GCI propose, the language of Section 280.140 should be modified as follows.

> b) Allowable reasons for disconnection of an entire multi-meter premises after the utility has verified that tenants (customers) other than the customer denying access for regulatory requirements, non-payment, or meter readings can lawfully provide access to the space containing the meter to which access has been denied by the associated customer:
> f) Reconnection: If access is not provided, the utility shall not disconnect a building under the rule unless it has resources in place and is be prepared to reconnect service on the same day as the disconnection or the day access is provided for any customers of a multi-meter premises who were otherwise not eligible for non-payment disconnection.

Section 280.160 Medical Certificate

EXCEPTION # 14

Subsection 280.160(h) Medical Certificate – Proposed 12-Month Payment Plan

While Staff's proposed Medical Certification procedure is a significant improvement over existing certification requirements, the Proposed Order, unfortunately, adopts Staff's proposal to create an inflexible payment schedule in scenarios that often require flexibility. Proposed Order at 216. No particular evidence or rationale for that conclusion is included in this section of the rule. Staff's recommendation that medical certificate customers adhere to a 12-month payment plan, while well-intentioned, ignores the possibility that the condition triggering the need for the certification also triggers a significant loss of income resulting from the medical emergency. GCI Ex. 1.0 at 34-35: 929-942. GCI agree a customer must agree to a payment plan during the initial period governed by a medical certification. But Staff's automatic establishment of an equally divided 12-month payment plan is, in effect, a budget payment plan that may not be appropriate for some customers. A customer may need one or more months in which there is no payment on the arrears balance, but rather a payment of only the monthly bill, particularly when the customer's household is facing a significant loss of income due to the medical emergency. Instead, Ms. Alexander recommends, similar to the language applicable to a regular DPA, that the utility first be obligated to attempt to negotiate an individual payment plan and only implement the automatic (12-month) DPA if the customer fails to respond or refuses to negotiate any payment plan. GCI Ex. 1.0 at 34-35:929-942.

GCI witness Alexander's proposal to incorporate that right into the Medical Certification portion of the Part 280 rules simply acknowledges the fact that medical emergencies can wreak havoc on a customer's finances. Rather than "discriminate," a negotiated DPA provides a needed, temporary accommodation that likewise benefits the utility, assuming it keeps the customer on a path toward repaying an outstanding debt. Under the GCI proposed modification, the $1/12^{th}$ payment requirements defined in the Staff proposes Part 280.160 would take

precedence only if such negotiation is not successful or the customer refuses to provide the necessary information.

In GCI Ex. 5.1, Ms. Alexander provided specific language that, if adopted, would enable a customer to attempt to negotiate a payment plan that fits their medical and financial needs. The proposed language in Part 280.160 reads as follows:

~~g~~h) Medical Payment Arrangement (MPA):

> Upon contact by a customer whose account is delinquent or who desires to avoid a delinquency and who has received a medical certificate, the utility company shall inform the customer that it will offer a medical payment arrangement appropriate for both the customer and the utility company. The utility company may require the customer to demonstrate an inability to pay or other household circumstances that should be taken into account to negotiate the terms of the MPA. If the customer proposes payment terms, the utility company may exercise discretion in the acceptance of the payment terms based upon the account balance, the length of time that the balance has been outstanding, the customer's recent payment history, the reasons why payment has not been made, and any other relevant factors concerning the circumstances of the customer, including health, age, and family circumstances.

GCI Ex. 5.1 at 53. The GCI-proposed language further provides that "If a customer is unwilling to discuss the customer's household circumstances or ability to pay, the utility may require the payment terms ($1/12^{th}$ of the amount owed over 12 months) proposed by Staff." *Id.* This proposed modification reflects the best of compromises offered by the parties, and should be adopted by the Commission.

As GCI witness Alexander noted, medical emergencies often trigger significant losses of income due to the medical emergency. Requiring that all outstanding debts be resolved *and* the elapse of 12 months before a customer can even apply for another certification minimizes the profound effect illness has on a customer's ability to stay current on utility debts and other bills.

Moreover, it stands to reason that if a customer has paid all outstanding amounts, and provides the necessary written documentation, then that customer has proven worthy of the special payment arrangements and time extensions that medical certification provisions provide. The utilities' hollow, unproven suggestion of customer fraud should be rejected by the Commission.

The very existence of DPAs, contrary to some utilities' suggestions, reflect the reality that there will always be customers who face significant financial challenges, sometimes brought on by medical emergencies, who require some flexibility in payment arrangement in order to retain essential utility service. The requirement that utilities attempt to negotiate DPAs is a mainstay of customer rights under both the current rule (Part 280.110) and the rule that will be adopted in this docket, which recognizes that a utility has an obligation to attempt to negotiate a payment plan that takes individual circumstances into account.

GCI urges the Commission to adopt Staff's proposed Part 280.160 with the modifications proposed by Ms. Alexander, as reflected in GCI Ex. 5.1, pages 51-54.

Proposed Order Revisions

In accordance with the arguments presented above, GCI urges the Commission to reject the Proposed Order's adoption of the Staff-recommended Medical Certificate 12-month payment plan, and modify the Commission analysis and conclusion at page 216 as follows:

> ~~The Commission finds that Staff's proposed language for Section 280.160(h) is reasonable and appropriate.~~ GCI witness Alexander's proposal to incorporate that right into the Medical Certification portion of the Part 280 rules simply acknowledges the fact that medical emergencies can wreak havoc on a customer's finances. Rather than "discriminate," a negotiated DPA provides a needed, temporary accommodation that likewise benefits the utility, assuming it keeps the customer on a path toward repaying an outstanding debt. Under the GCI proposed modification, the $1/12^{th}$ payment requirements defined in the Staff-proposed Part 280.160 would take precedence only if such negotiation is not

successful or the customer refuses to provide the necessary information. Staff's automatic establishment of an equally divided 12-month payment plan is, in effect, a budget payment plan that may not be appropriate for some customers. A customer may need one or more months in which there is no payment on the arrears balance, but rather a payment of only the monthly bill, particularly when the customer's household is facing a significant loss of income due to the medical emergency, for example. Instead, the Commission hereby adopts, similar to the language applicable to a regular DPA, that the utility first be obligated to attempt to negotiate an individual payment plan and only implement the automatic (12-month) DPA if the customer fails to respond or refuses to negotiate any payment plan.

Proposed Rule Revisions

In accordance with the arguments presented above, GCI urges the Commission to adopt the following rule provision related to Medical Certification:

> a) Intent: To permit customers with medical emergencies to obtain additional time to negotiate needed extensions or payment plans to ensure that utility service is not disconnected. This provision also provides for, at a minimum, a temporarily prohibition on disconnection of utility service to a residential customer for at least ~~30~~60 days in cases of certified medical necessity; and to provide an opportunity for the customer to retire past due amounts by periodic installments under an automatic medical payment arrangement (MPA) commencing after the 60 days has expired.
>
> b) A customer shall be permitted to orally declare a medical emergency to a utility which should remain in effect for three ~~five~~ (3~~5~~) business days until the customer has obtained the certification required by this section'. The utility may proceed with pending collection activity if the customer's oral declaration is not confirmed in writing by the authorized medical professional at the end of the three business days.
>
> b) Certifying parties: Certification may be made by either a licensed physician or a local board of health.
>
> c) Method of certification by the licensed physician or local board of health:

1) ~~Initial~~The utility shall accept an oral certification, but may require a (7) days after the initial certification. by phone call is allowed.

~~2) Written (may be mailed, faxed or delivered electronically) certification must be provided within seven (7)5 days after an initial certification by phone call.~~

d) Certificate content:

1) Name and contact information for the certifying party;

2) Service address and name of patient;

3) A statement that the patient resides as the premises in question; and

4) A statement that the disconnection of utility service will aggravate an
existing medical emergency or create a medical emergency for the patient.

e) Certificate timing:

1) Certificate presentation prior to disconnection earns a Medical Payment Arrangement term, as described under subsection (h)(1) below.

2) Any certificate submitted by a customer whose service has been disconnected within the previous 14 days shall require the utility to reconnect service promptly on the same day as the receipt of the certification, but no later than 48 hours after such receipt. In appropriate circumstances, the utility may accept a certification after 14 days.
~~Certificate may be presented up to 14 days after disconnection, with utility discretion as to whether it shall accept a certificate after more than 14 days from disconnection have passed.~~ Certification presented after disconnection earns a medical payment arrangement term, as described under subsection (h)(2) below.

~~f) Restoration:~~

~~1) When a valid medical certification is made to the utility up to 14 days after disconnection, service shall be restored within one day of the certification.~~

~~2) The utility shall not treat the disconnected customer as an applicant for service for purposes of restoration under a medical certificate.~~

~~f~~g) Duration of certificate: The certificate shall protect the account from disconnection for 60~~30~~ days from the date of certification. If the customer was disconnected prior to certification, then the 60~~30~~ day period shall not begin until the utility restores the customer's service. ~~A customer shall be permitted to renew the medical certificate for up to 90 days.~~

g~~h~~) Medical Payment Arrangement (MPA):

Upon contact by a customer whose account is delinquent or who desires to avoid a delinquency and who has received a medical certificate, the utility ~~company~~ shall inform the customer that it will offer a medical payment arrangement appropriate for both the customer and the utility~~company~~. The utility ~~company~~ may require the customer to demonstrate an inability to pay or other household circumstances that should be taken into account to negotiate the terms of the MPA. If the customer proposes payment terms, the utility ~~company~~ may exercise discretion in the acceptance of the payment terms based upon the account balance, the length of time that the balance has been outstanding, the customer's recent payment history, the reasons why payment has not been made, and any other relevant factors concerning the circumstances of the customer, including health, age, and family circumstances. If a customer is unwilling to discuss the customer's household circumstances or ability to pay, the utility may require the following payment terms:

1) If valid medical certification is received prior to disconnection, then the first bill statement that will be due after the 60~~30~~ day certification period shall indicate:

A) An amount to pay that is equal to 1/12th of the total amount owing for utility services by the customer;

B) The remaining balance owing for utility services;

C) That the customer is on a medical payment arrangement; and

D) 11 remaining installments of equal amounts to be paid on future bills.

2) If valid medical certification is received after disconnection, then the first bill statement that will be due after the ~~30~~60 day certification period shall indicate:

A) An amount to pay that is equal to 1/4th of the total amount owing for utility services by the customer;

B) The remaining balance owing for utility services;

C) That the customer is on a medical payment arrangement; and

D) Nine remaining installments of equal amounts to be paid on future bills.

3) Valid medical certification shall earn the customer an MPA, regardless of the success or failure of previous payment plans of any type authorized by this rule or offered by the utility~~sort~~.

i) New certification of previously certified accounts: Accounts that received a prior valid medical certificate shall be eligible for new certification any time after either:

1) The total account balance has been brought current; or

2) 12 months from the beginning date of the prior certification has passed.

Section 280.170 Timely Reconnection of Service

EXCEPTION # 15

Subsection 287.170(f) Reconnection of Service

The Proposed Order adopts Staff's recommendation to require utilities to reconnect utility service within four calendar days for electric, water and sewer service reconnections, and seven calendar days for natural gas reconnections – timelines that mirror the same intervals provided in Staff's Section 280.30 Application language. Proposed Order at 221. In doing so, the Proposed Order notes that "extreme weather conditions or other circumstances experienced

in Illinois service areas create situations where the two day reconnections recommended by AARP and GCI are not feasible." *Id.* This conclusion, however, is not supported by the record evidence. While the Proposed Order highlights Peoples Gas's argument that requests for reconnection just prior to the start of the heating season make compliance with even Staff's four-day proposal difficult to achieve (PO at 220), this is not justification for making customers wait for essential utility services.

The need for a defined, brief activation period can be traced directly to utility performance in the context of utility management decisions that have reduced their workforces. PGL-NS Init. Br. at 15-16; Nicor Init. Br. at 36. As noted in the GCI Reply Brief, the benefit of utility staffing cost control flows to utility bottom lines, with service to customers suffering. The Commission cannot evaluate every change against a standard of cost consequences to a utility looking to maintain low workforce levels. Service consequences to customers – particularly when it comes to reconnections of essential utility service – warrant equal weight. There is considerable benefit to customers in gaining an essential utility service 2-3 days earlier; certainly it permits applicants to safely occupy their dwellings earlier. The Proposed Order, however, assigns no benefit or value to customers of this basic, fundamental utility obligation.

In fact, nothing precludes utilities from hiring additional workers, contract or otherwise, to meet the seasonal demand for reconnection. Certainly, no party has suggested that the expense associated with these additional hires, if needed, would not be recoverable in a future rate case. The Commission must take a more balanced view of utility cost controls and consumer protection requirements. The adequacy of utility service cannot be redefined to a lower standard whenever utilities have decided to reduce their resources or claim they have inadequate staff at particular (and not unexpected) times of the year.

The bottom line is that Proposed Order's recommended reconnection timelines are unnecessarily long and would threaten customers with foregoing power, water or natural gas for days at a time. While well-meaning in its attempt to define specific timelines, this language is deficient precisely because it is GCI's understanding that most utilities complete service orders and restoration of service within much shorter time frames, and that the time frames reflected in Staff's proposal were intended to accommodate situations in which shorter time frames could not be assured due to operational and external factors. GCI Ex. 1.0 at 39:1039-1060. These lengthy time periods for service activation and reconnection of service are unnecessary, and potentially dangerous to customers and applicants who may be without essential heat, power and water. As noted in the GCI's Initial Brief, this provision, in practice, would allow two business days to process an application and then an additional four calendar days for a routine "service activation" for electric service and up to seven days for gas utilities. GCI Reply Brief at 84-88. These time frames are much too long, particularly when a premise visit may not be required.

In addition, the evidence shows that the four-day standard adopted for electric, sewer and water utilities in the Proposed Order is outside of the norm adopted in other states. GCI witness Alexander testified that she is not aware of any other state regulation that would allow such a lengthy period prior to reconnection of service. She noted that Pennsylvania regulations require electric and natural gas utilities to reconnect service no later than the end of the first full working day after receiving payment or satisfying other criteria to allow reconnection.[6] Moreover, Ohio utilities must reconnect electric service and natural gas service no later than the following regular utility company working day.[7] GCI Ex. 5.0 (Rev.) at 36:829-838. Other states follow similar,

[6] 52 Pa. Code § 56.191.
[7] Ohio Admin. Code 4901:1-18-07.

shorter reconnection time periods. *See* GCI Corrected Initial Brief at 87-88. In short, Staff's proposed reconnection requirements would put Illinois outside of the norm as compared to other states when it comes to ensuring prompt reconnection policies.

Finally, the Proposed Order's adoption of Staff's proposed rule would create a wide-ranging exception for "unforeseen circumstances," a point not addressed in the Proposed Order. Staff Ex. 3.0, Attachment A at 51, Part 280.170(f). Although Staff states in its testimony that they crafted the language for this section to "allow for a utility to miss the standard in circumstances beyond its control," the wording in the proposed regulation -- "temporary unanticipated overload of its ability to provide for the timely reconnection"— is much too broad and could be read to include circumstances that are in fact within their control, such as adding workers during peak hours or seasonal periods. GCI Ex. 2.0 at 20:513-519.

In short, the evidence suggests that the four- and seven-day reconnection standard adopted in the Proposed Order would provide an incentive for utilities to slow down the reconnection process as compared to current practice, and not maintain an employee complement sufficient to provide essential utility service. For all of these reasons, the GCI proposal to shorten the reconnection time from four (for electric, water or sewer utilities) days to two days and from seven days (for natural gas utilities) to two days should be adopted.

Proposed Order Revisions

In accordance with the arguments presented above, GCI urge the Commission to modify the Commission Analysis and Conclusion at page 221 of the Proposed Order as follows:

> The Commission finds that Staff's proposed language for Section 280.170(b) ~~is reasonable and appropriate. The Commission is cognizant that extreme weather conditions or other circumstances experienced in Illinois service areas create situations where the two day reconnections recommended by AARP and GCI are not~~

~~feasible. The Commission also finds that the penalty for failing to make a timely reconnection should be equal to a non-prorated monthly customer charge to provide a modest incentive to the utility to act promptly.~~ unnecessarily lengthens the time consumers must wait to receive essential utility services. Staff's proposed language, while well-meaning in its attempt to define specific timelines, is deficient precisely because it is GCI's understanding that most utilities complete service orders and restoration of service within much shorter time frames, and that the time frames reflected in Staff's proposal were intended to accommodate situations in which shorter time frames could not be assured due to operational and external factors. GCI Ex. 1.0 at 39:1039-1060. These lengthy time periods for service activation and reconnection of service are unnecessary, and potentially dangerous to customers and applicants who may be without essential heat, power and water. In addition, the evidence shows that the four-day standard adopted in the Proposed Order is outside of the norm adopted in other states. Regulations from other states support GCI's call for a two-day reconnection period. For all of these reasons, GCI's well-reasoned proposal is hereby adopted.

Proposed Rule Revisions

In accordance with the arguments presented above, GCI urges the Commission to modify Part 180.170, as adopted in the Proposed Order, as follows:

a) Intent: To provide for the timely reconnection of disconnected customers after they have remedied the reasons for the disconnection or provided valid medical certification.

b) Timing: Once a disconnected customer remedies the reason for the disconnection or provides a valid medical certificate, the utility shall prioritize reconnection as indicated in this subsection. If the utility does not comply with the time limits in this subsection, it shall not bill the customer a reconnection charge. If, through no fault of the customer, the utility delays reconnection for two or more calendar days beyond the number of days required in this subsection, then it shall issue a credit to the customer's account equal to the monthly customer charge for that customer.

1) A customer account where a valid medical certificate has been provided shall receive first priority and be reconnected within one business day after the certification.

2) A customer disconnected in error shall be reconnected within one business day.

3) A disconnected electric, water or sewer customer who remedies the reason for the disconnection, and is not required by the utility to provide information as a new applicant for service, shall be reconnected as soon as reasonably possible, but no later than two ~~within four~~ calendar days, unless there are circumstances beyond the control of the utility that justify a later date. Such circumstances shall be documented by the utility.

4) A disconnected natural gas customer who remedies the reason for the disconnection, and is not required by the utility to provide information as a new applicant for service, shall be reconnected as soon as reasonably possible, but no later than two ~~within seven~~ calendar days, unless there are circumstances beyond the control of the utility that justify a later date. Such circumstances shall be documented by the utility.

c) Exception for lack of access: A utility shall not be obliged to conform to the above time limits in subsection (b) if it is not allowed access to reconnect the service; provided, however, that the utility must record the date, time of day, utility personnel involved and the reason access was not gained. It shall retain the record for a period of two years.

d) Exception for disconnection not at the meter or not at the normal place of disconnection: A utility shall not be obliged to conform to the above time limits in subsection (b) if it was forced to by lack of access to disconnect the service at a location other than the meter or at a place other than the normal place of disconnection if the utility does not normally disconnect service at the meter.

e) Exception for damage or unsafe condition: A utility shall not be obliged to conform to the above time limits of

subsection (b) if repair, construction or correction of an unsafe condition is required prior to reconnection of service.

f) ~~Temporary exception for unforeseen circumstances: A utility that experiences temporary unanticipated overload of its ability to provide for the timely reconnection of disconnected customers may, upon notice explaining the circumstances to the Consumer Services Division of the Commission, temporarily forego the requirements of this section so long as the utility can demonstrate that it is taking diligent action to remedy the overload.~~

~~g~~f) If service was shut off in error, the utility shall not bill the customer a reconnection charge.

Section 280.270 Annual Reporting to the Commission

EXCEPTION # 16

The Proposed Order purports to adopt Staff's proposed language with one of GCI's suggested revisions. Staff had not, however, proposed specific rule language. GCI proposed specific data collection metrics for the Commission's consideration in Ms. Alexander's testimony. Ms. Alexander's proposed metrics comport with other parts Staff's proposed rule, where Staff proposed that utilities track certain information and make that information available to Staff upon request. GCI Ex. 1.0 at 11:270-272. Ms. Alexander identified sections 280.40(k), 280.210, and 280.180(h) as examples of where Staff has suggested that utilities be required to gather information regarding certain issues. *Id*. at 11-12:272-279. Based on Ms. Alexander's testimony, GCI recommended that section 280.270 – Data Collection and Reporting -- be added to the revised Part 280 mandating that utilities collect certain information regarding the performance of the new rules.

After reviewing the parties' respective positions on GCI's proposed section 280.270, the Proposed Order concludes that "Staff's proposed language as amended pursuant to one of GCI's suggested revisions for Section 280.270 is reasonable and should be adopted." Proposed Order at 251. The Proposed Order's conclusion is unclear. Staff did not propose a section 280.270. As the Proposed Order's description of Staff's position states, "Staff did not propose or support a separate and expanded reporting Section. [Citation Omitted] Staff's proposed rule contains limited data collection and reporting requirements for the topics: applications for service, deposits and Payment Avoidance by Location." *Id*. at 246. Thus, there is no "Staff's proposed language" to adopt.

Equally unclear is the Proposed Order's reference to "one of GCI's suggested revisions for Section 280.270." *Id*. at 251. GCI proposed adding section 280.270 to incorporate Staff's recommended reporting requirements as well as several other categories of information that utilities should collect and report to the Commission. It is not certain what GCI revisions the Proposed Order is referencing. To complicate things further, there is no section 280.270 in the Proposed Rule attached to the Proposed Order.

The Proposed Order nonetheless articulates support for the policy and record evidence underlying GCI's recommended section 280.270. Ms. Alexander described numerous reasons why such data collection and reporting are important.

- Data collection and reporting is important as part of the Commission's oversight obligations over utilities. This is particularly true with respect to the utility processes that govern access to essential utility services. GCI Ex. 1.0 at 12:293-297. Data collection and reporting can provide a basis for determining the effectiveness of the changes to its most important consumer protection and

customer service policies. It can also provide a basis for determining whether additional changes to Part 280 are warranted at some future time. *Id*. at 13:312-324.

- Data collection and reporting provides a basis for allowing the Commission to determine whether the rules are being implemented consistently by the various utilities in Illinois. If different utilities report information in different formats, the Commission, Staff, and interested parties will not be able to compare the performance of the various utilities under the new Part 280. *Id*. at 12-13:297-303. Ms. Alexander noted that the workshops that were conducted for this case and utility discovery responses showed that the State's utilities do not collect and maintain date regarding credit and collection practices in a clear, transparent manner that allows for easy comparison among utilities. *Id*. at 13-14:326-328. As a result, as noted above with respect to DPAs, there is little or no data for the Commission to judge the proposed changes to Part 280 or the utilities' respective performance under the current version of Part 280. *Id*. at 14:333-338.

- Even in the limited places where Staff's draft rule requires utilities to collect data, the information would only be available to Staff, and then only upon request. The data collected by utilities should be reported to the Commission and made available to Staff and interested parties. *Id*. at 13:303-306.

Ms. Alexander also noted that the National Association of Regulatory Commissioners (NARUC) has weighed in on these issues, concluding that it,

> recognizes the importance of gathering comparable aggregate residential billing and arrearage data. This data aggregation is critical in order to quantify the extent of customer indebtedness to utilities and to determine the financial impact of customer indebtedness on utilities. This type of data also provides critical

> assistance in the formulation of state and national policies to assure affordable electric and natural gas service for residential customers. Such data also provides support for those programs necessary to the health, safety and welfare of American households. A lack of wide ranging billing and arrearage data has made it more difficult for many consumer groups, legislative offices and commissions to measure the magnitude of the problem of nonpayment as it affects consumers. To facilitate gathering the necessary data, NARUC passed a Resolution at the Winter Meeting on 2/15/06. Titled A Resolution Supporting the Gathering of Data for Electric and Natural Gas Distribution Companies by Individual State Utility Commissions (Appendix A), it urged each individual State to gather relevant utility billing and arrearage data from all electric and gas utilities within its state commission jurisdiction. The resolution recommended a collections survey as the tool to gather the data. This report includes the data results from the completed surveys as well as a comparison of the data with data from previous surveys. The report summarizes the justification for continuing this project and addresses those arguments against continuation. The conclusion of the Subcommittee is that the data collection project merits continuation because the data generated is critical to support state and federal low income assistance programs, such as LIHEAP, and to evaluate the impact affordability of essential electric and natural gas service has on customers.

Id. at 14-15:346-383, *quoting*, Report by the NARUC Consumer Affairs Subcommittee on Collections Data 382 Gathering by States (July 2007).

Ms. Alexander added that the NARUC Report states that as of 2007, 18 states required their gas and electric utilities to gather and report credit and collection data to their respective state regulatory commissions. GCI Ex. 1.0 at 15:390-392. Ms. Alexander went on to testify that several of these states have found the data gathered and reported by utilities to be useful in developing utility service access and bill collection policies. *Id*. at 16-17:403:426.

Accordingly, GCI recommended that Part 280 be revised to require that by February 15th of each year, Illinois's gas and electric utilities report the following information to the Commission.

1. The average number of accounts receiving service (to obtain the annual average, sum the month-end totals and divide by 12);
2. The number of new customer accounts established;
3. The average length of time between a successful application for service and the activation of the customer's account;
4. The number of accounts in which the customer's account was activated or established beyond 48 hours and the average length of time beyond 48 hours for those accounts;
5. The average customer bill per billing period and per year (divide the total residential revenues receivable by the number of bills issued);
6. The average number of accounts with overdue amounts per billing period (an overdue amount is the amount billed to the customer that was not paid by the due date of the bill or by a date otherwise agreed upon);
7. The average dollar amount of overdue amounts per billing period;
8. For those accounts with overdue amounts per billing period, the length of time over which the overdue amount accrued expressed as 31-60 days, 61-90 days, and over 90 days;
9. The number of disconnection notices issued per month;
10. The number of disconnections for any reason other than at the request of the customer or the abandonment of the premises per month;
11. The number of residential reconnections following disconnection without consent per month (requests for service by new customers are excluded);
12. The length of time expressed in 24-hour increments from the time that the customer remedied the reason for the disconnection until the customer was reconnected;
13. The number of residential reconnections following disconnection without consent per month where the service was placed in another person's name;
14. The number of residential accounts that were disconnected without consent that year that were not reconnected prior to the start of the winter period (this number should not include accounts that were placed in another person's name);
15. The number of DPAs negotiated by type of DPA offered to its customers (e.g., regular, low income, medical, budget, special relating to winter rules);
16. With regard to each type of DPAs for residential customers, the following information:
    a) The number of DPAs that were completed;
    b) The number of DPAs that were renegotiated;
    c) The average down payment for a DPA; and
    d) The average length of the DPAs entered into expressed in months.
17. The number of deposits requested and received and their average dollar amount;

18. The number of applications for service that were denied and the reasons therefore;
19. The number of residential applications for service in which the utility demanded a deposit or payment arrangement for a prior unpaid debt as part of its application for service (after the request for service, but within 60 days);
20. The number of medical certifications submitted to the utility and the number denied, if any, and the reasons therefore;
21. The number of customer payments reported by each of the methods allowed or authorized by the utility to accept customer bill payments;
22. The gross revenue received;
23. The actual write off amounts and method used to ascertain those figures (and any other figures that reflect uncollectible amounts);
24. The amount recovered from previously written off amounts and method used to ascertain those figures;
25. The number of cases and dollar amount of unpaid debt pursued through the court system or other means, the costs of collection by each method; and
26. The total number of customer disputes handled categorized by the following minimum categories:
    a) Request for deposit;
    b) DPA terms and conditions;
    c) Terms required to avoid disconnection of service;
    d) Terms required to obtain reconnection of service;
    e) Estimated bills;
    f) Amount of bill; usage; calculation of bill;
    g) Line extensions;
    h) Medical Certifications; and
    i) Other.

27. Any additional data or studies requested by the Commission Staff from one or more utilities based on a pattern or practice reflected in customer complaints or other credible evidence that suggests that the actual implementation of the revised new Part 280 rules needs additional evaluation.

Id. at 18-20:458-557.

Ms. Alexander recommended that "The data reported by the utilities should conform to uniform definitions and formats so that the data can be compared across Illinois utilities and combined for statewide results." *Id*. at 17:435-437. Ms. Alexander also proposed that the information be made available to the public, (*id*. at 18:444-449), and that the rule include a

provision allowing Staff to request additional information from utilities if customer complaints or other credible information suggests that additional data reporting is necessary. *Id*. at 20-21:563-569.

While the utilities almost uniformly opposed GCI's recommended data collection and reporting proposal, citing additional cost as a barrier,(*see*, *e.g.*, AIU Ex. 3.0 at 24:519-524; Peoples Gas-North Shore Ex. JR-2.0 at 55:1225-1229), the record demonstrates that most utilities are already capable of providing most or all of the referenced information. In her Surrebuttal Testimony, Ms. Alexander presented a table setting forth the utilities responses to a discovery request asking them (1) to identify the number of the 26 items included in GCI's recommended section 280.270 that they currently can collect and (2) to estimate the costs associated with collecting this information. GCI Ex. 5.0 (Rev.) at 40:939-941. Ms. Alexander's table is reproduced below.

Utility	**Can Be Provided Now or with Some Programming**	**Cost Information**
Ameren Illinois Utilities	26 of 26	$17,000 (270 IT hours)
Peoples Gas	20 of 26	Refused to respond
MidAmerican	18 of 26	Refused to respond
ComEd	16 of 26	Refused to provide, but most reports were deemed "low difficulty."
Nicor Gas	24 of 26 available or "partially available"	Refused to respond

Id. at 41:943-944. From this data Ms. Alexander concluded that "the responses indicate that there is no significant barrier to the development of a reasonable list of key data that will not result in significant additional costs" to the utilities. *Id*. at 40-41:941-943. \

Proposed Order Revisions

Accordingly, the Proposed Order conclusion at page 251 regarding CGI's proposed section 280.270 should be deleted and should be replaced by the language below.

> The Commission concludes that GCI's recommended section 280.270 should be adopted. As Ms. Alexander testified, there are several reasons for requiring utilities to gather and report this information. Such reasons include:

- Data collection and reporting is important as part of the Commission's oversight obligations over utilities. This is particularly true with respect to the utility processes that govern access to essential utility services. GCI Ex. 1.0 at 12:293-297. Data collection and reporting can provide a basis for determining the effectiveness of the changes to its most important consumer protection and customer service policies. It can also provide a basis for determining whether additional changes to Part 280 are warranted at some future time. *Id*. at 13:312-324.

- Data collection and reporting provides a basis for allowing the Commission to determine whether the rules are being implemented consistently by the various utilities in Illinois. If different utilities report information in different formats, the Commission, Staff, and interested parties will not be able to compare the performance of the various utilities under the new Part 280. *Id*. at 12-13:297-303. Ms. Alexander noted that the workshops that were conducted for this case and utility discovery responses showed that the State's utilities do not collect and maintain date regarding credit and collection practices in a clear, transparent manner that allows for easy comparison among utilities. *Id*. at 13-14:326-328. As a result, as noted above with respect to DPAs, there is little or no data for the Commission to judge the proposed changes to Part 280 or the utilities' respective performance under the current version of Part 280. *Id*. at 14:333-338.

- Even in the limited places where Staff's draft rule requires utilities to collect data, the information would only be available to Staff, and then only upon request. The data collected by utilities should be reported to the Commission and made available to Staff and interested parties. *Id*. at 13:303-306.

The Commission also notes that the National Association of Regulatory Commissioners (NARUC) has weighed in on these issues, concluding that it

> recognizes the importance of gathering comparable aggregate residential billing and arrearage data. This data aggregation is critical in order to quantify the extent of customer indebtedness to utilities and to determine the financial impact of customer indebtedness on utilities. This type of data also provides critical assistance in the formulation of state and national policies to assure affordable electric and natural gas service for residential

> customers. Such data also provides support for those programs necessary to the health, safety and welfare of American households. A lack of wide ranging billing and arrearage data has made it more difficult for many consumer groups, legislative offices and commissions to measure the magnitude of the problem of nonpayment as it affects consumers. To facilitate gathering the necessary data, NARUC passed a Resolution at the Winter Meeting on 2/15/06. Titled A Resolution Supporting the Gathering of Data for Electric and Natural Gas Distribution Companies by Individual State Utility Commissions (Appendix A), it urged each individual State to gather relevant utility billing and arrearage data from all electric and gas utilities within its state commission jurisdiction. The resolution recommended a collections survey as the tool to gather the data. This report includes the data results from the completed surveys as well as a comparison of the data with data from previous surveys. The report summarizes the justification for continuing this project and addresses those arguments against continuation. The conclusion of the Subcommittee is that the data collection project merits continuation because the data generated is critical to support state and federal low income assistance programs, such as LIHEAP, and to evaluate the impact affordability of essential electric and natural gas service has on customers.
>
> Report by the NARUC Consumer Affairs Subcommittee on Collections Data 382 Gathering by States (July 2007).
>
> The Commission rejects the utilities' arguments that the added reporting requirements in section 280.270 are prohibitively expensive. The table Ms. Alexander included in her Rebuttal Testimony (GCI Ex. 5.0 at 41:943-944) shows that this is not the case.

Proposed Rule Revisions

In accordance with the Proposed Order's finding that the data collection provision is reasonable, GCI propose the Commission explicitly adopt GCI's proposed language as Section 280.270(b), as follows:

(b) All natural gas and electric utilities shall file the following information by February 15th of each year, with the information listed separately for residential and non-residential customers (unless otherwise specified):

1. The average number of accounts receiving service (to obtain the annual average, sum the month-end totals and divide by 12);
2. The number of new customer accounts established;
3. The average length of time between a successful application for service and the activation of the customer's account;
4. The number of accounts in which the customer's account was activated or established beyond 48 hours and the average length of time beyond 48 hours for those accounts;
5. The average customer bill per billing period and per year (divide the total residential revenues receivable by the number of bills issued);
6. The average number of accounts with overdue amounts per billing period (an overdue amount is the amount billed to the customer that was not paid by the due date of the bill or by a date otherwise agreed upon);
7. The average dollar amount of overdue amounts per billing period;
8. For those accounts with overdue amounts per billing period, the length of time over which the overdue amount accrued expressed as 31-60 days, 61-90 days, and over 90 days;
9. The number of disconnection notices issued per month;
10. The number of disconnections for any reason other than at the request of the customer or the abandonment of the premises per month;
11. The number of residential reconnections following disconnection without consent per month (requests for service by new customers are excluded);
12. The length of time expressed in 24-hour increments from the time that the customer remedied the reason for the disconnection until the customer was reconnected;
13. The number of residential reconnections following disconnection without consent per month where the service was placed in another person's name;
14. The number of residential accounts that were disconnected without consent that year that were not reconnected prior to the start of the winter period (this number should not include accounts that were placed in another person's name);
15. The number of DPAs negotiated by type of DPA offered to its customers (e.g., regular, low income, medical, budget, special relating to winter rules);
16. With regard to each type of DPAs for residential customers, the following information:
    a) The number of DPAs that were completed;
    b) The number of DPAs that were renegotiated;

c) The average down payment for a DPA; and

d) The average length of the DPAs entered into expressed in months.

17. The number of deposits requested and received and their average dollar amount;

18. The number of applications for service that were denied and the reasons therefore;

19. The number of residential applications for service in which the utility demanded a deposit or payment arrangement for a prior unpaid debt as part of its application for service (after the request for service, but within 60 days);

20. The number of medical certifications submitted to the utility and the number denied, if any, and the reasons therefore;

21. The number of customer payments reported by each of the methods allowed or authorized by the utility to accept customer bill payments;

22. The gross revenue received;

23. The actual write off amounts and method used to ascertain those figures (and any other figures that reflect uncollectible amounts);

24. The amount recovered from previously written off amounts and method used to ascertain those figures;

25. The number of cases and dollar amount of unpaid debt pursued through the court system or other means, the costs of collection by each method; and

26. The total number of customer disputes handled categorized by the following minimum categories:

a) Request for deposit;

b) DPA terms and conditions;

c) Terms required to avoid disconnection of service;

d) Terms required to obtain reconnection of service;

e) Estimated bills;

f) Amount of bill; usage; calculation of bill;

g) Line extensions;

h) Medical Certifications; and

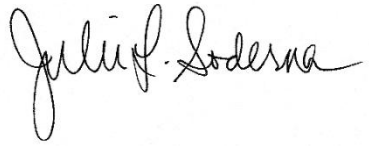
i) Other.

27. Any additional data or studies requested by the Commission Staff from one or more utilities based on a pattern or practice reflected in customer complaints or other credible evidence that suggests that the actual implementation of the revised new Part 280 rules requires additional evaluation.

III. CONCLUSION

For the reasons stated above, GCI respectfully request the Commission make the modifications to the Proposed Order and the First Notice Rule articulated herein.

Dated: June 29, 2012



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